

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2009-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY DEPARTMENT OF REAL ESTATE			AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE MISCELLANEOUS REGULATIONS		TITLE(S) 10	FIRST SECTION AFFECTED 2728	2. REQUESTED PUBLICATION DATE February 27, 2009
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON DAVID B. SEALS	TELEPHONE NUMBER (916) 227-0791	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT		
	AMEND		
	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only			
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
			E-MAIL ADDRESS (Optional)

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

For use by Office of Administrative Law (OAL) only

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REAL ESTATE COMMISSIONER

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commissioner proposes to adopt, amend and/or repeal sections 2728, 2731, 2755, 2773, 2848, 2903, 2930, 2971, 3005, 3006, 3007, 3007.05, 3007.2, 3007.3, 3007.6, 3008, 3010, 3011.1, 3011.2, 3011.4 and 3012.2 in Title 10 of the California Code of Regulations (CCR).

PUBLIC COMMENTS

The Commissioner or his representative will hold a public hearing starting at 10:00 AM, on April 13, 2009, at the Department of Real Estate Examination Room, located at 2200 X Street, Suite 120B, Sacramento, California. The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Commissioner.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on April 13, 2009. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0791

Comments may be sent via electronic mail to regulations@dre.ca.gov or via fax to David B. Seals at (916) 227-9458.

AUTHORITY AND REFERENCE

The changes to the regulations are authorized by Business and Professions Code sections 10080, 10170.4, 10226, 10232.1, 11001, and 11011.8 to implement, interpret or make specific Business and Professions Code sections 10026, 10027, 10085, 10085.5, 10131.2, 10132, 10137.1, 10140.6,

10146, 10148, 10153.4, 10159.5, 10170.4, 10170.5, 10177, 10177.6, 10232.1, and 10235, Government Code section 11425.50, and Public Resources section 21082.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

SUMMARY OF EXISTING LAWS AND REGULATIONS

Business and Professions Code Section 10137.1 provides that real estate brokers may form partnerships that can perform acts requiring a real estate broker license provided that every partner through whom the partnership performs such acts is a licensed real estate broker. Regulation Sections 2728 and 2755 were adopted as a complement to Section 10137.1 to facilitate the operation of partnerships established pursuant to Section 10137.1. These regulations as they exist today are confusing to licensees and the public because the Department does not license partnerships. The repeal of Regulation Sections 2728 and 2755 and the re-adoption of Section 2728 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

A licensed real estate broker is allowed to conduct an escrow in the course of, or incidental to, a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required under the authority of Section 17006 (a) (4) of the Financial Code. Brokers who choose to perform escrow services under this condition are exempt from obtaining a license as an escrow company issued by the Department of Corporations (DOC). Some brokers have requested that the Department allow them to add a fictitious business name to their license which contains the term escrow to call attention to potential clients that they provide in-house escrow services. Prior to the Department approving a fictitious business name with the word “escrow” in it, the Department asks the DOC whether they have any objection to the use of the proposed name. Historically, the DOC has no objection. Recently, however, DOC has informed the Department they will no longer provide letters of no objection for brokers who use or intend to use the word “escrow” in fictitious business names of real estate brokers. Further, DOC has expressed concerns about the names that real estate brokers are using to identify in-house escrow operations because of the problem of distinguishing those business entities from independent escrow operations licensed by DOC. The changes proposed herein in Regulation Section 2731 is intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Effective July 1, 2009, Section 10140.6 subsection (b) (1) of the California Business and Professions Code provides that a real estate licensee shall disclose his or her license identification number on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting as an agent in those transactions. The name of the licensee alone does not provide this protection due the commonality of names and the use of nicknames or team names in the course of doing business. Further, this section provides that the commissioner may adopt regulations identifying the materials in which a licensee must disclose a license identification number. The proposed adoption of Regulation Section 2773 is intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Sections 10232.1 and 10235 of the Business and Professions Code provide the statutory basis for the Department's obligation to assure that the advertising of real estate brokers who solicit borrowers or lenders for or negotiate loans or collect payments or perform services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, are not doing so in a false, misleading or deceptive manner. Regulation Section 2848, Title 10, California Code of Regulations was promulgated in 1965 to implement, interpret, and make specific the provisions of Sections 10232.1 and 10235. As a result of the changing conditions of the real estate market, the need to protect consumers and the concerns as raised by the Legislature, Section 2848 was amended in 2007 to require additional disclosures in advertising by licensees regarding various "higher risk" loan products to assure that the advertising is not misleading or deceptive. Concerns continue to be raised about investments in trust deeds secured by one or more interests in real property. These high risk investments were not specifically included in the 2007 amendments. The changes proposed in Regulation Section 2848 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Effective January 1, 2009, Section 10177.6 of the Business and Professions Code requires a person or entity that arranges financing in connection with a sale, lease, or exchange of real property and acts as an agent with respect to that property to make a written disclosure of those roles, within 24 hours, to all parties to the sale, lease, or exchange and any related loan transaction. However, the statute fails to require a written acknowledgment from all parties to assure that the disclosure has been received by all parties. The proposed adoption of Regulation Section 2903 is intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 2930 was adopted in 1998 to assist Administrative Law Judges in crafting Orders in Proposed Decisions prepared by them as a result of conducting hearings on behalf of the Commissioner based on Accusations and Statements of Issues filed against real estate licensees and license applicants. Over the years Section 2930 has been in effect amendments have been made to the regulation as changes in the law and practice of real estate have dictated. Section 2930 was amended in 2003 to include subsection 17. Trust Fund Violation Course Requirement to assure that licensees who committed trust fund violations would have to complete a specified trust fund accounting continuing education course before they could obtain a restricted real estate license. The changes proposed in Regulation Section 2930 subsection 17 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 10132.1 of the California Business and Professions Code (the Code) defines a real estate broker as a person who engages in the business of, among other things, charging or collecting an advance fee. Section 10026 of the Code defines an "advance fee" as a fee charged or collected from a principal in connection with the performance of any acts for which a real estate license is required.

Section 2970 of Title 10, California Code of Regulations, requires persons who propose to collect an advance fee to submit to the Commissioner all materials to be used in advertising or soliciting the payment of an advance fee including the form of advance fee agreement proposed to be used. Advance fee materials proposed to be used by real estate

brokers and submitted to the Department are reviewed to determine whether they comply with the requirements of Regulation Section 2970.

As a result of the recent downturn in the real estate sales and loan markets and the increase in real property foreclosures in California, some real estate brokers who formerly derived a substantial portion of their income from soliciting and negotiating loans for homeowners have now expanded their services to include arranging or attempting to arrange loan modifications for those homeowners whose loans are in default and who face foreclosure. California Civil Code sections 2945 et seq. were passed by the Legislature in an effort to protect the public from “foreclosure consultants” who take unfair advantage of homeowners who have defaulted on their financial obligations which are secured by their homes.

The number of advance fee agreements submitted to the Department pursuant to Regulation Section 2970 has increased substantially over the past twelve months. That increase is expected to continue into the near future. Without the benefit of a streamlined review process made possible by a model advance fee agreement, the ability of Department personnel to respond to the increased volume in a timely manner will, at some point in the near future, be compromised.

Section 10085 of the Code provides that the Commissioner may determine the form of advance fee agreements.

In 1984 the real estate industry and the Department increased the emphasis on continuing education for real estate licensees. In 1996 sweeping changes were made again, with many of the continuing education regulations being repealed and major deletions made to others. With the explosion of real estate licensees to over 500,000 in the state, it became necessary to change focus again. In 2007 a number of the regulations adopted pursuant to the authority of Business and Professions Code section 10170.4 to implement and make specific section 10170.5 of the Code were to require final examinations in all continuing education courses and to make other improvements. Technology has changed the way continuing education courses are presented and the speed with which information is disseminated and manipulated. In addition, due to the current market economy, real estate licensees are looking toward technology as a means of completing their continuing education requirements. Rules must be established to keep pace with technology and to insure the consistency of the continuing education program regardless of the method of presentation. The amendments proposed in Regulation Sections 3006, 3007, 3007.05, 3007.2, 3007.3, 3007.6, 3008, 3010, 3011.1, 3011.2, 3011.4, 3012.2, and repeal of Section 3005 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

SUMMARY OF THE EFFECT OF THE PROPOSED ACTION

REPEAL OF SECTION 2728

The Department proposes to repeal Sections 2728 and 2755 and re-adopt a new Section 2728 to explain and incorporate the repealed regulations into one.

ADOPTION OF SECTION 2728

The Department proposes re-adopting a new Regulation Section 2728 explaining and incorporating both Section 2728 and 2755.

AMENDMENT OF SECTION 2731

This amendment would add a subsection (d) to require that brokers who currently hold a broker license with a fictitious business name which contains the term “escrow”, upon the renewal of their broker license, amend their fictitious business name on their license to include the words “a non-independent broker escrow”.

REPEAL OF SECTION 2755

Repeals this section and combine the language into the newly adopted Section 2728.

ADOPTION OF SECTION 2773

The purpose of this proposed regulation is to implement and make specific the types of solicitation and contact information to which Section 10140.6 subsection (b) (1) of the Code applies and to assist real estate licensees in complying with the disclose requirements.

AMENDMENT OF SECTION 2848

The purpose of this amendment is to require licensees to provide a statement in advertisements of investments in trust deeds secured by one or more interests in real property regarding risk of loss and to require retention of the advertising materials for 3 years.

ADOPTION OF SECTION 2903

The purpose of this proposed change is to make specific that the written disclosure required by Section 10177.6 of the Business and Professions Code must be acknowledged in writing by all of the parties to the sale, lease, or exchange, and any related loan or financing transaction.

AMENDMENT OF SECTION 2930

The purpose of this proposed amendment to subsection 17. is to (1) require that licensees who have had their licenses suspended because of trust fund violations be required to complete a specified trust fund accounting continuing education course before their suspension would be lifted and (2) clarify the time period in which licensees who committed trust fund violations and are seeking to obtain a restricted license would have to complete the trust fund accounting continuing education course.

ADOPTION OF SECTION 2971

The purpose of this proposed regulation is to provide model advance fee agreements acceptable to the Department for use by real estate brokers who engage in loan modification services.

REPEAL OF SECTION 3005

The purpose of this proposed change is to repeal Section 3005 of the regulations because the definitions Section 3005 will be incorporated into the proposed changes made to Sections 3006 and 3007.3.

AMENDMENT OF SECTION 3006

The purpose of the proposed changes are to establish and clarify the criteria that the Commissioner will apply when reviewing an application for a continuing education course for approval, that the criteria are consistent throughout the program regardless of the method of presentation, and to insure the integrity of all continuing education offerings.

AMENDMENT OF SECTION 3007

The purpose of the proposed changes are to establish and clarify the supporting documentation that must accompany an application for approval of a continuing education course, to insure all course approvals are consistent throughout the program regardless of the method of presentation, and to insure the integrity of all continuing education offerings.

AMENDMENT OF SECTION 3007.05

The purpose of this proposed change is to make a grammatical correction to subsection (a) to delete the “s” from “drivers” license.

AMENDMENT OF SECTION 3007.2

The purpose of this amendment is to further clarify that course providers are required to obtain approval of material changes to an approved course before the changes are implemented.

AMENDMENT OF SECTION 3007.3

The purpose of the proposed changes is to clarify and establish the procedures a course provider must follow during the administration of a final examination, regardless of the method of delivery, to insure the integrity of the final examination is protected.

AMENDMENT OF SECTION 3007.6

The purpose of this amendment is to provide a means for a real estate licensee to verify that a continuing education course has been approved by the Department prior to their enrollment in the course.

AMENDMENT OF SECTION 3008

The purpose of this proposed change is to make editorial and grammatical corrections to capitalize “Commissioner” and “Section” where appropriate and to rearrange the words in subsection (a) for greater readability.

AMENDMENT OF SECTION 3010

The purpose of this proposed change is to make grammatical corrections to capitalize the word “Commissioner”.

AMENDMENT OF SECTION 3011.1

The purpose of this amendment is to clarify the course materials required to properly evaluate a petition for course instruction as well as when a course provider can issue a completion certificate to an instructor of an approved continuing education course.

AMENDMENT OF SECTION 3011.2

The purpose of this amendment is to clarify the course materials required to properly evaluate a petition for authorship of an article or book in determining equivalency in meeting continuing education requirements.

AMENDMENT OF SECTION 3011.4

The purpose of this amendment is to clarify the course materials required to properly evaluate a petition for attendance at an unapproved course in determining equivalency in meeting continuing education requirements.

AMENDMENT OF SECTION 3012.2

The purpose of this proposed regulation is to require final examination grades be retained as proof of a participant’s successful completion of a continuing education course to issue a duplicate completion certificate upon request.

EFFECT ON SMALL BUSINESS

The proposed regulatory changes will not substantially adversely affect small business. A detailed estimate of the costs is included in the 399 included as a part of this package as well as in Exhibit 1 to the Initial Statement of Reasons.

DISCLOSURES REGARDING THE PROPOSED ACTION

1. Plain English drafting: The Commissioner has confirmed that these regulations have been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a) (1).

2. Mandate on local agencies and school districts: None.
3. Cost or savings to any state agency: None.
4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 - 17630: None.
5. Other non-discretionary cost or savings imposed upon local agencies: None.
6. Cost or savings in federal funding to the state: None.
7. The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
8. The Commissioner has made an initial determination that the adoption, amendment or repeal of these regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.
10. Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a) (13), the Commissioner must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187007

Sacramento, CA 95818-7007

Telephone: (916) 227-0791

The backup contact person is:

John VanDriel, Assistant Chief Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0791

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0791

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0791

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INTERNET SITE

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the

rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website (www.dre.ca.gov). The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

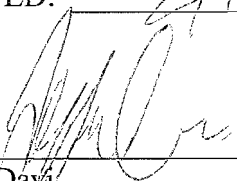
COMPLIANCE WITH GOVERNMENT CODE §11346.4(A) (1) THROUGH (4)

The Department of Real Estate (the Department) has complied with Government Code §11346.4(a) (1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed Regulations with changes indicated in strikeout and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.
4. The California Association of Realtors, a real estate licensee trade organization and the California Building Industry Association, a homebuilder's trade organization.

5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

DATED: 2/17/09



Jeff Davis
Real Estate Commissioner